

CHAPTER 16

INVESTIGATIONS

16.1 Purpose of Chapter; Penalties; Orders.

- (a) To enable the Commission to enforce the provisions of the State Police Commission Article and the State Police Commission Rules, the Commission may investigate conduct asserted to be in violation thereof.
- (b) When, after a public investigative hearing, a classified employee in state police service is found to have violated the State Police Commission Article or a State Police Commission Rule, the Commission may order that employee be suspended, demoted, discharged or otherwise disciplined or fined for contempt in accordance with Rules 2.11 - 2.13.
- (c) When, after a public investigative hearing, the conduct of any person is found to have violated the State Police Commission Article or a State Police Commission Rule, the Commission may issue such orders as it deems appropriate.

16.2 Requests for Investigation.

- (a) Any person who suspects that there has been a violation of the State Police Commission Article or a State Police Commission Rule may file a request for investigation with the Executive Director.
- (b) A request for investigation must be in writing and may not be combined with any other matter. It should: be clearly identified as a request for investigation; provide the name, mailing address and daytime telephone number of the person filing the request; and describe the conduct to be investigated in as much detail as is available to the person filing the request.
- (c) A request for investigation shall not be a public record.

16.3 Investigations by the Executive Director.

- (a) The Executive Director may, even without a request, investigate any suspected violation of the State Police Commission Article or a State Police Commission Rule and shall conduct such investigations as ordered by the Commission.

(b) Upon receipt of a request for investigation, the Executive Director or the Executive Director's designee shall conduct the investigation as warranted based on the information contained in the request for investigation or any other available information. Thereafter, the Executive Director shall either file formal charges under Rule 16.4 or notify the person who filed the request for investigation that formal charges are not being filed. A copy of Rule 16.4 shall be attached to this notice.

16.4 Formal Charges.

(a) Any person who asserts that there has been a violation of the State Police Commission Article or a State Police Commission Rule may file formal charges with the Commission by filing the same with its Executive Director.

(b) Formal charges should be clearly identified as such and may not be combined with any other matter and must:

1. be in writing;
2. contain the name, mailing address, and daytime telephone number of the person filing the charges (hereafter, the complainant) and of the complainant's attorney, if any;
3. contain the name and mailing address of each person who is charged with committing a violation (hereafter, a respondent);
4. REPEALED - EFFECTIVE JANUARY 10, 2019
5. describe the conduct in sufficient detail to enable the Commission to determine whether the alleged conduct violates the State Police Commission Article and/or a State Police Commission Rule and to enable the respondent to prepare a defense; and
6. describe, in detail, the facts which led the complainant to conclude that a violation occurred.
7. REPEALED - EFFECTIVE JANUARY 10, 2019

(c) When formal charges are filed by someone other than the Executive Director, the Executive Director may join as a complainant.

(d) Formal charges shall not be a public record.

16.5 Commission Action on Formal Charges.

- (a) Each filing which purports to be formal charges shall be considered by the Commission in executive session.

Thereafter, in its sole discretion, the Commission may take such action as it deems appropriate, including any of the following:

1. decline to investigate the matter and order the charges dismissed;
2. order the Executive Director to conduct an investigation and to submit a report thereon;
3. offer the complainant an opportunity to provide additional information; and/or
4. order a public investigative hearing on some or all of the charges.

- (b) Written notice of the Commission's action shall be given to the complainant.

16.6 Docketing of Public Investigations.

After the Commission orders a public investigative hearing, the charges to be investigated shall be docketed and the case shall become a public record. Copies of the charges to be investigated and the Commission's order shall be mailed to each complainant, each respondent and each respondent's appointing authority, if any.

16.7 Parties; Notice to Parties.

- (a) The parties to a public investigation are the complainant(s) and the respondent(s). Upon a respondent's written request, a respondent's appointing authority may be made a party.
- (b) Whenever this Chapter requires notice to the parties, notice shall be given to all counsel of record and to all unrepresented parties. Notice to counsel of record shall constitute notice to the party represented.

16.8 Consolidation of Public Investigations.

Two or more public investigations involving common issues of law or fact or two or more public investigations involving the same parties may be consolidated for hearing.

16.9 Notice of Hearings.

Written notice of the time and place for a public investigative hearing shall be mailed to the parties at least 30 calendar days before the date of the hearing. With the consent of the parties, this notice and delay may be waived.

16.10 Continuance of Hearings.

A public investigative hearing may be continued by the Commission on its own motion or by its Chairman or its Executive Director:

- (a) for good cause shown; or
- (b) by consent of all parties; or
- (c) if it is no reached for hearing.

16.11 Summary Disposition.

- (a) The Commission, on its own motion or on motion of a party, may summarily dispose of a public investigation under Rule 16.14(b) or Rule 16.15(a) or on any of the following grounds:
 - 1. that the conduct to be investigated, even if proven, would not constitute a violation of the State Police Commission Article or a State Police Commission Rule;
 - 2. that the conduct to be investigated has not been described in sufficient detail to enable the respondent to prepare a defense;
 - 3. that the facts asserted to support the conclusion that a violation occurred, even if proven, do not support that conclusion;
 - 4. that the matter under investigation has become moot and no further action is needed;
 - 5. that the complainant has already been afforded an opportunity to prove the same charges in an appeal hearing or in another public investigative hearing;
 - 6. that the information provided by complainant and any information developed by investigation does not establish a violation as alleged.

- (b) A party may move for summary disposition orally at the public investigative hearing or in writing any time before the Commission renders its final decision in the case.
- (c) When the Commission summarily disposes of a public investigation, it shall render a decision in accordance with Rule 16.16.

16.12 Withdrawal of Charges.

With the approval of the Commission, the charges to be investigated may be withdrawn upon the complainant's written request filed before the date of the public investigative hearing or upon the complainant's oral request made at the hearing.

16.13 Amendment of Charges.

- (a) The charges to be investigated may be amended or supplemented by the Commission on its own motion or, with the approval of the Commission, on written motion of the complainant.
- (b) The respondent shall be notified of any amended or supplemental charges to be investigated and shall be given a reasonable opportunity to prepare a defense against the additional charges.

16.14 Procedure for Hearings.

- (a) The burden of proof, as to the facts, shall be on the complainant.
- (b) The Commission may require the complainant to give his/her sworn testimony before hearing any other witness and if the Commission finds from such testimony that there is no just or legal ground to support the charges, it may decline to hear or consider any other evidence and dismiss the investigation.
- (c) If the investigation is not dismissed under subsection (b), the Commission shall allow the complainant to present such evidence as is relevant to the charges.
- (d) The charges against a respondent shall not be accepted as *prima facie* true. Evidence shall not be received from the complainant to supplement or enlarge the charges except as approved under Rule 16.13. The respondent may rebut

any proof offered by the complainant in support of the charges.

- (e) Except insofar as they refer to referees, the provisions of State Police Commission Rules 13.11(a), (b), (d), (g), (h), (i), (j), (k), (l), (n), (o), (p) and (q) are hereby made applicable to public investigative hearings.

16.15 Failure of Parties to Appear at Hearing.

- (a) If the complainant, without having been granted a continuance, is neither present nor represented at the place and time fixed for a public investigative hearing, the Commission may order the investigation dismissed.
- (b) If a respondent or a respondent's appointing authority, without having been granted a continuance, is neither present nor represented at the place and time fixed for a public investigative hearing, the respondent and the appointing authority may be deemed to have waived their appearance and testimony may be taken in their absence with the same effect as if present.

16.15.1 Attorney's Fees

When the Commission finds there is no reasonable basis for the complaint under 16.4, the Commission may order the complainant to pay reasonable attorney's fees to the respondent in an amount not to exceed \$1,500 per respondent.

16.16 Decisions.

After concluding a public investigative hearing, the Commission shall render and file a written decision with the Executive Director. The Commission's decision shall be final on the day that it is filed and on that date, the Executive Director shall mail a copy of the decision to the parties.

16.17 Certain Rules Governing Appeal Hearings Adopted by Reference.

Except insofar as they refer to referees, the provisions of the following Rules are hereby made applicable to public investigative hearings:

- (a) Rule 13.7 - "Place of Hearing."
- (b) Rule 13.13 - "Subpoena of Witnesses; Production of Documents."

- (c) Rule 13.16 - "Transcripts of Proceedings of Appeals to the Commission."
- (d) Rule 13.17 - "Refusal to Appear; Refusal to Testify; False Testimony."
- (e) Rule 13.18 - "Costs of Appeals."
- (f) Rule 13.19 - "Witness Fees."
- (g) Rule 13.21 - "Interlocutory Rulings."
- (h) Rule 13.23 - "Recusal of a Commissioner or Referee."
- (i) Rule 13.24 - "Interrogatories; Pre-Trial Discovery; Rehearing of Appeal."

16.18 Applicability to Pending Investigations.

When this Chapter becomes effective, any investigation which has already been docketed but has not yet been decided shall be processed in accordance with Rule 16.5.